06-121

RECEIVED

OCT 13 2006

Federal Communications Commission
Office of the Secretary

DOCKET FILE COPY ORIGINAL

STATEMENT OF

Taylor Hackford
On Behalf of the Directors Guild of America

Before the

Federal Communications Commission

Hearing on Media Ownership

October 3, 2006
Los Angeles, CA

No. of Copies rec'd 0+1
List ABCDE

Chairman Martin and Commissioners, my name is Taylor Hackford and I thank you for inviting me to appear before you today to discuss the problem of media consolidation and its impact on prime time programming. We greatly appreciate your fostering this debate and discussion.

I am a working director and producer of both feature films and television, and I am here today on behalf of the Directors Guild of America (DGA), for which I serve as the Third Vice President. The Directors Guild today represents over 13,400 directors and members of the directorial team who work in feature film, television, commercials, documentaries and news. The majority of our members work in television as directors, associate directors, and stage managers.

The DGA's mission is to protect the economic and creative rights of directors and the directorial team – working to advance our artistic freedom and ensure fair compensation for our work. The consolidation of media and entertainment programming in fewer and fewer hands imperils both.

On this subject – media consolidation and its relationship to programming – I want to be clear from the beginning. That there is a proliferation of media outlets for the distribution of programming – what we might call the **diversity of outlets** – available to the consumer today is irrefutable. Our concern is with an equally irrefutable fact: a **diversity of source**, the pool of entities producing content, is almost non-existent today.

What is this diversity of source we are talking about? Going back to 1971, the kind of entertainment programming that has been the paradigm is high quality, expensive scripted comedies and drama. Those programs have a life that runs into the future; they depend not so much on their original exhibition windows as they do on their later exhibition windows. They are programs that generate profits after they mature – often five years or more. And these are programs backed by people willing to spend and deficit-finance the production on the network in the hope of coming up with good original ideas that will last for a generation. These are the shows that we talk about while they are on the air and long after they have left our living rooms.

Our position on this issue, as I sit here today, has not changed since the Guild spoke out during the debate to eliminate the Financial Interest and Syndication Rules in the early- to mid-1990s. We predicted then that the elimination of those rules would enable the networks, once free to produce and own their own shows, to swallow up or drive out smaller or independent producers.

We wish we had not been right. Unfortunately we were. Quite simply, the robust independent production community supplying product to the networks that existed a decade ago has been put out of business. *Today, each major network is a sister company to a studio that was formerly an independent supplier of programming.*

For the past decade we have also said that if you take away the fin-syn rule – and we are not arguing for its return – *that there has to exist in the prime-time network business* some incentive that would encourage those who want to invest capital to gain access to the airwaves. It is with such an incentive that you get people into the competitive mix who are willing to risk now, at the front end, in the hope of success in the future. But that means there has to be some potential for financial gain at the other end. The potential for gain in our industry comes from ownership and distribution rights. Unfortunately that access to the airwaves – and the incentive that comes with it – no longer exists.

I know today you will hear personal stories and anecdotes from other speakers. Those stories are important because they speak to the everyday reality that our creative community faces. They offer pieces of the picture. So I want to use my testimony to present some of the cold, hard facts that are the foundation from which those stories arise. Our analysis comes directly from data DGA has tracked, show by show, for network (CBS, ABC, NBC and Fox) prime time programming from the 1992/93 season to the present.

- In the 1992/93 television season – before the Financial Interest –Syndication Rules went into effect – 66% of network primetime television was created by independent producers, with the networks accounting for the remaining 34%. Three years later the shift was well underway. By the 1998/99 season, the roles had essentially reversed. Networks and their affiliated producers were responsible for 62% of what the public saw in the primetime 1998/99 season, with the independent producers' share falling to 38%.

- This trend continued through the 90s and into this century. Today, in the 2006/07 season, the independents' share has fallen to 24% (including both scripted and non-scripted programming) while the networks and their affiliates own and control *76% of the hours of primetime television aired each week on the four major networks.*

- The number of independent suppliers of scripted programming – one important measure of source and program diversity – has decreased from twenty-three in the early 1990s to two today. And those two – Warner Bros. and Sony – are part of media conglomerates that do not resemble the strong independent companies that once existed; such as Carsey-Werner, MTM Enterprises, Steven Bochco Productions, Witt/Thomas/Harris, and of course Stephen Cannell Productions. This fact underscores the real situation and the reality we face. The current 24% "independent" programming share that I mention above, cannot be viewed as an isolated number; it has to be understood in the context of <u>who</u> is producing that programming. In other words, and I want to underscore this, the <u>only two</u> "independent" producers left standing and producing a significant portion of this season's 24% of primetime programming are not independents as they have historically been defined.

These are the facts. The prime time network schedule is still the most watched television in this country. For a significant number of Americans – 15% or close to 43 million – those network channels are still the only channels to which they have access. It is still the primary revenue center for most advertisers. Even looking at a media landscape that is changing, this will remain the reality for the foreseeable future. We should not let this be clouded by the often-heard argument that there is a proliferation of cable and pay television channels that gives consumers a wider range of choices. As I said earlier, there is no question that consumers have greater choice than ever before, but we are not speaking about diversity of outlets. We are talking about a diversity of programming source.

I am not here simply to lament the situation in which this community finds itself. We do in fact have a proposal. It is the same proposal that we – and a number of others – had submitted to the Commission in our 2003 filing. The rule we are proposing would strengthen the viability of independent producers, directors and writers by requiring the 4 major networks to use programming from fully independent sources on 25% of the primetime schedule. This is a modest set-aside compared to the 100% market share that independents enjoyed pre-Fin Syn. And, of course, the networks would still be entitled to keep 100% of the advertising revenue and have a minority piece of the profits in the programming. This would be sufficient to encourage investment in quality programming from entrepreneurs who are driven more by risk and reward, not short-term earnings targets. It would also advance the political, congressional and regulatory goals of promoting competition and diversity in the network-dominated prime time programming marketplace.

This is a critical issue for those of us at this table who create the programs that not only Americans but billions of people around the world enjoy daily. When the independents flourished, the creative community had a multitude of places to go to present their ideas. Often a director would go hand-in-hand with a studio or another investor to "sell" the program, fight for the program, and work with the investor to make the program a success. The demise of that independent production marketplace enables the networks to negotiate supplier deals on any terms they desire. It also means that there is no one to join in the fight for an idea or a program. The power of argument – and the rewards for success – all reside with one side.

Yes of course this also carries the burden of failure which may also explain why shows have such a short shelf-life today. A recent article in the *Washington Post* noted that a decade ago a new network series might get a dozen episodes to find an audience. Today, two weeks into what might be called the "new season", there is already public handicapping of which shows will get pulled the quickest. The fight to keep a show on the air all happens "in house". The show and its creators have no independent voice at the table, even if they sit at the table.

I thank you again for this opportunity. The DGA hopes to work with this Commission as you continue your media ownership review. We believe we are joined with you in the desire to serve the public interest through diversity and competition.